

Diplomatic Immunity
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The Senator from Massachusetts also stated that he had talked to the Costa Rican Embassy and relayed their position that "if Mr. Parker has any grounds for a complaint, No. 1, he should be willing to pursue those within the framework of Costa Rican law, which he agreed to do in his original proposal and arrangement with them. That is No. 1. No. 2, failing this, the Government is willing to go into binding international arbitration as an act of friendship, trust and good will toward the United States."

Mr. President, Mr. Parker did pursue his remedies within Costa Rican law. He filed two lawsuits in Costa Rica and was preparing a third when he entered into a "Gentlemen's Agreement" with a Costa Rican official that if Parker would withdraw his suits, the Government of Costa Rica would authorize and sponsor certain business projects which would substitute in lieu of a cash settlement.

Mr. Parker lived up to his part of the agreement, but Costa Rica did not. Consequently, the Statute of Limitations ran, and Mr. Parker's claims were barred.

At a meeting on June 24 between six individuals from the State Department, Mr. Parker's attorney, and members of Senator Inouye's, Senator Kasten's, and my staff, the State Department representatives were adamant that this case should go to binding international arbitration.

Furthermore, Mr. President, the U.S. Trade Representative has taken the position that this case should go to arbitration. In a letter to Mr. Parker dated January 27, 1988, Jon Rosenbaum, the Assistant U.S. Trade Representative, stated,

"We continue to work with the Costa Rican government to seek a prompt and equitable resolution to your investment dispute. At this stage, submitting the case to arbitration by a third party seems to us the best way to proceed . . . We hope you will agree that arbitration is the most constructive way to get both sides talking again. We believe it will move the process toward what we hope will be a just resolution of your claim."

Mr. President, I was convinced that his was a reasonable solution. Now I find out that when the conference committee met, the State Department and the parties who had objected to my amendment and insisted on the compromise language made a 180-degree turn. In their position paper, which was submitted to the conferees, the State Department said, "It is premature to require the GOCR to agree to lengthy and expensive arbitration when the avenue of negotiation remains open to Mr. Parker."

In a letter to the conferees, Senators KERRY, SANFORD, and DODD stated their opposition to the compromise language. In that letter, they mention that "the most recent development was a settlement offer extended by Costa Rica in May of this year. Mr. Parker rejected the offer and has not submitted a counterproposal. Mr.

Parker's attorney travelled to Costa Rica in June, at the expense of the Costa Rican government, to discuss settlement further."

Mr. President, this is exactly the game Costa Rica has been playing for 10 years. When the Costa Ricans are on the verge of having to finally address this case in good faith, they will make a meaningless gesture so the State Department can scream, "They are negotiating. Let's not do anything to jeopardize the negotiations!"

In December 1986, Mr. Parker received a call from the Costa Rican Minister of Public Works and Transport (Guillermo Constenla) who informed Mr. Parker that they were anxious to settle his claim. Mr. Parker and his attorney flew to Miami the next day to put forth a proposal for a cash settlement plus future business projects for a total value of approximately \$32 million. The Costa Rican official indicated that he believed his government would accept the proposed and that it could be completed by Christmas 1986.

Coincidentally, President Arias was meeting with President Reagan later that month and was able to report to U.S. officials that a settlement was near in the Parker case. Of course, nothing ever came of the settlement offer.

By the way, Mr. President, Mr. Parker's attorney, in order to avoid any suggestion that they aren't ready and willing to negotiate in good faith, went to Costa Rica on a day's notice to meet with Mr. Constenla—supposedly at the expense of the Costa Rican Government. During that meeting, Mr. Constenla continued to insist that Costa Rica had no obligation to Mr. Parker, and even if they did, Costa Rican law prohibits them from settling it.

Mr. Parker's attorney wrote to Minister Constenla asking that he be reimbursed for the \$790.65 for the expenses of his trip. To add further insult to this matter, Minister Constenla responded on August 22, that,

"When we offered to pay for the plane tickets we did so with the understanding that you would ask us for said tickets and we would send them to you in advance, from out of the government quota, just as we did in the round-trip Miami-San Jose flight. Regrettably we cannot reimburse you for the expenses you incurred because we do not have legal authorization to do so. You would have had to request the tickets from us in advance."

Mr. President, what has been most disturbing about this case is that the U.S. Government has urged the Government of Costa Rica repeatedly to settle this dispute. Our Government has received continued assurances from the Costa Rican Government that they desire to settle the claim. Yet no action is ever taken in a good faith effort to address the damages that Mr. Parker has suffered. This has gone on for far too long, and it is now time for Congress to step in and require that genuine efforts be pursued to settle this dispute.

Let me take a moment to review some of the efforts the U.S. Government has made to encourage the Government of Costa Rica to settle this case. In a letter to Mr. J. Royal Parker dated December 2, 1983, Mr. Jon Rosenbaum, then Assistant United States Trade Representative, wrote:

"We have discussed your case with the Costa Rican Government and have reached an understanding with them that true negotiations with your corporation must proceed if the Government of Costa Rica is to remain in conformance with the requirements of the (Caribbean Basin Economic Recovery Act).

In a letter to Senator BILL BRADLEY dated January 20, 1984, the United States Trade Representative, William Brock, wrote:

"An understanding was reached between the Governments that true negotiations with J. Royal Parker must proceed if the Government of Costa Rica is to remain in conformance with the mandatory requirements of the (Caribbean Basin Economic Recovery Act). Costa Rican officials were made fully aware that more concerted attention to the J. Royal Parker case was required immediately."

In a letter to the Costa Rican Minister of Foreign Commerce, Her Excellency Muni Figueres, dated July 28, 1986, the United States Trade Representative, Clayton Yeutter, wrote:

"I would like to call your attention to . . . the J. Royal Parker case, which has long remained unresolved despite your Government's pledge and repeated assurances of expeditious settlement. This has now become a matter of high-level interest in the U.S. Government. . . . In 1983, the Government of Costa Rica (GOCR) was designated as a beneficiary nation under our Caribbean Basin Initiative (CBI) on the condition that this case would be resolved quickly. . . . A number of provisions of U.S. law exist which require that various economic benefits (including Costa Rica's CBI eligibility) be terminated or withheld if any country fails to take appropriate steps to settle expropriation claims by providing prompt, adequate, and effective compensation."

Mr. President, I thank my colleagues for the clarification today. We encourage all parties to cooperate fully with the Foreign Claims Settlement Commission, and we look forward to receiving their report along with any comments from the parties.

AMENDMENT NO. 3343

Mr. HELMS: Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER: The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from North Carolina (Mr. HELMS) proposes an amendment numbered 3343 to the House amendment to the Senate amendment numbered 182.

Before the period at the end of amendment, insert the following:

Provided further, That title V of S. 2757 as reported by the Senate Committee on Foreign Relations on September 7, 1988 is hereby enacted into law."

Mr. HELMS: Mr. President, before I proceed to discuss the amendment, I

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want to pay my respects to the distinguished managers of the bill. This must be a frustrating experience—it is to me—to deal with amendments in disagreement and be sure that we have every horse in the right stall. But the Senator from Hawaii, as always, has been most patient and understanding, and I appreciate that.

Mr. President, as to the pending amendment, let me say at the outset that I am pleased that title V of the pending legislation corrects the worst abuses of diplomatic immunity that have allowed the family and support staff of foreign diplomats to commit crimes that would warrant serious punishment if committed by U.S. citizens. The escalation in the number of so-called diplomatic personnel in our country to the present level of 37,000 has obviously exacerbated this problem. In practice, these 37,000 foreigners are free, under current law, to commit any crime—no matter how serious, how violent, or how heinous—and remain free from prosecution.

As a matter of fact, in hearings before the Foreign Relations Committee, we had testimony from law enforcement officers that some of these 37,000 people committed unspeakable crimes, including the rape of a young woman, and laughed at her and said: "You can report it to the police if you want to, but they won't be able to do a thing. We have diplomatic immunity."

Now, obviously, the problems experienced by our citizens are greater than in other countries because of the large foreign delegations to the United States as well as the delegations which also enjoy diplomatic immunity at the United Nations, and other international organizations physically located in the United States.

Title V emphasizes a change in the treatment of diplomatic immunity for family and support staff of foreign diplomats when the families or staff traffic in drugs, drive while intoxicated or commit other reckless driving offenses, or commit violent crimes against U.S. citizens.

But title V does not do enough. It is with the support of the chairman of the Foreign Relations Committee, not the original provision I offered last year. This provision represents the consensus provision adopted by the Senate conferees during consideration of the State Department authorization bill last December. At that time, it was supported by the distinguished chairman and myself, as well as a majority of the Senate conferees. The conferees representing the House Judiciary Committee opposed the provision, but promised hearings for early 1988. In the absence of any House action, however, the Senate Foreign Relations Committee felt it appropriate to renew the effort to pass this legislation to provide a remedy for Americans abused by foreign diplomats.

Mr. President, title V of the bill is, as I say, a first step in the direction of curtailing the abuses of diplomatic im-

munity that have been tolerated by the Department of State.

I have had telephone calls from people in the administration, almost pleading that I do not offer this amendment. I tell them I am sorry. I am going to offer it.

The point is that many of these abuses could have been addressed administratively by the State Department but the State Department did not do its job. This provision will require the State Department to act appropriately in this area of great concern and importance.

The thrust of the proposal is that foreign diplomats charged with serious crimes will continue to be eligible to have diplomatic immunity invoked on their behalf. However, this immunity will be available only if and when invoked by the Foreign Minister of the sending country and that tightens the grip a little bit. The cheese begins to bind. These people will not feel free to rape and pillage and rob and deal in drugs and all the rest of the things that are just unconscionable.

Under the pending amendment, which I have just sent to the desk, the Secretary of State is required to request of the sending country that diplomatic immunity be waived in the case of serious crime in order to permit the prosecution of the individual. If that immunity is waived by the Foreign Minister, the individual will be subject to normal prosecution procedures in the various jurisdictions where such crimes are committed.

However, if the sending country does not waive the immunity, the Secretary of State, under this amendment at the desk, will be required to declare the person non grata, persona non grata, and require that individual to get the dickens out of the United States. We do not want him here, or her.

Individuals who are required to leave under such circumstances will be personally excluded from the United States under the immigration revision also included in the amendment.

The provision also addresses the abuses of the diplomatic pouches. Oh, what goes on with these pouches. These pouches are intended to carry messages to and from the sending country. The provision requires the President to take such steps as may be necessary to prevent the use of diplomatic pouches for the transportation of illicit narcotics, explosives, weapons, or any material used to foster terrorism into the United States of America.

I contend that this amendment is badly needed. I wish all Senators could have heard the testimony that Senator PELL and I heard by law enforcement officers and victims.

A multitude of people came to plead with the Foreign Relations Committee to do something about the atrocities that are occurring day after day in the United States by people who are the guests of the United States.

Mr. President, the date this provision is enacted these diplomatic per-

sonnel and their families no longer will be able to walk away from their crimes. Either the foreign minister of the sending country will waive diplomatic immunity and permit these people to be prosecuted, or the individual will be expelled from the United States and never, never be permitted to return.

Mr. President, I ask unanimous consent that a description of the provisions of title V be printed in the RECORD.

There being no objection, the provisions were ordered to be printed in the RECORD, as follows:

DESCRIPTION OF PROVISIONS

TITLE V—DIPLOMATIC IMMUNITY ABUSE
PREVENTION ACT

Section 501—Short title

Section 501 provides a short title of "Diplomatic Immunity Abuse Prevention Act."

Section 502—Crimes committed by
diplomats

Section 502(a) amends the Foreign Mission Act, Title II of the State Department Basic Authorities Act of 1956, to require the Director of the Office of Foreign Missions to keep records on each incident in which an individual entitled to immunity is believed to have committed a serious crime.

Section 502(b) amends Section 5 of the Diplomatic Relations Act by adding a new subsection (b) to require the Secretary of State (1) to make an annual report to Congress on the incidents involving serious crimes believed to have been committed by individuals entitled to immunity, and on any undisputed debt owed by individuals entitled to immunity and (2) to work with law enforcement agencies to educate their officials on the extent of immunity from criminal jurisdiction to which members of the diplomatic community are entitled under international law and to assure that law enforcement officials fully investigate, charge, and prosecute individuals who commit serious crimes in the United States to the extent such action is consistent with such individual's immunity. In addition, this subsection prohibits any State Department employee from discouraging the investigation, charging, or prosecution of an alien, who is a member of a mission or any member of his family or any other alien not entitled to immunity. The Secretary may waive the prohibition with respect to a specific individual if the Secretary determines that significant foreign policy considerations or the national security so requires. Finally, this subsection requires that the Secretary notify each diplomatic mission in the United States of U.S. policy with respect to serious crimes committed by its members.

Section 503—Registration and departure
procedures for individuals with diplomat-
ic immunity

Section 503 amends Section 3 of the Diplomatic Relations Act to require the Secretary to develop and implement registration and departure procedures for members of diplomatic missions and their families. Section 503 further states that no individual may be accredited as a diplomat if there is pending against such individual allegations of criminal conduct in any jurisdiction of the United States, except that the Secretary may waive this requirement if he determines that accreditation is required by significant foreign policy considerations or the national security and so reports to the Committee on Foreign Affairs of the House of Representatives and the Committee on For-

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elign Relations of the Senate within 30 days after such accreditation.

Section 504—Waiver of diplomatic immunity or removal when charged with a serious crime

Section 504(a) amends the Foreign Missions Act to set up new procedures for requesting a waiver of diplomatic immunity for any individual entitled to immunity believed to have committed serious crimes. Under these procedures, the Secretary must (1) request the foreign ministry in the offender's country to waive immunity from criminal jurisdiction; (2) inform the foreign ministry in the offender's country that the United States intends to pursue compensation for damages resulting from the crime; and (3) if a waiver of immunity is denied, declare the individual non grata or ensure the individual's removal from the United States. The Secretary of State is directed to notify the Attorney General of each individual who leaves the United States because of that individual's alleged involvement in a serious crime to assure that such individual is permanently barred reentry into the United States.

Section 504(b) amends Section 212(a) of the Immigration and Nationality Act to conform it to the amendments to the Foreign Missions Act in subsection (a), adding a new category of aliens excluded from admission to the United States; any alien who left the United States because of that alien's alleged involvement in a serious crime. An exception to exclusion is authorized to allow entry into the United States for the purpose of any proceeding regarding the crime or if the Attorney General, in consultation with the Secretary of State, determines that allowing entry into the United States is in the national interest.

Section 505—Authority to institute and maintain criminal prosecutions

Section 505 further amends Section 5 of the Diplomatic Relations Act to authorize an exception to current law's requirement that any action or proceeding brought against an individual entitled to immunity be dismissed. That exception states that, in the case of a criminal proceeding, prosecution may be instituted and maintained so long as no action is taken to violate any immunities to which such individual is entitled.

Section 506—Review of U.S. policy on diplomatic immunity

Section 506 requires the Secretary of State to review U.S. policy on diplomatic immunity and report to the Congress within 180 days of enactment on recommendations for necessary changes in U.S. policy.

Section 507—Review of procedures for issuing visas to diplomats to the United States and the United Nations

Section 507 requires the Secretary of State, in consultation with the Attorney General, to review U.S. procedures for issuing visas to diplomats and report to Congress within one year on the results of this review.

Section 508—Liability insurance to be carried by diplomatic missions

Section 508 amends Section 6 of the Diplomatic Relations Act by adding a new subsection requiring the Director of the Office of Foreign Missions to establish a victims compensation insurance plan.

Section 509—Diplomatic pouches

Section 509 directs the President to take "necessary steps" to assure that diplomatic pouches are not used for illicit transportation of narcotics, explosives, and weapons and any materials used to foster terrorism.

Section 510—Definitions

Section 510(a) and 510(b) amend the Foreign Missions Act and the Diplomatic Relations Act to include definitions of the terms "serious criminal offense" and "individual entitled to immunity from the criminal jurisdiction of the United States". Section 510(c) further amends Section 2 of the Diplomatic Relations Act to conform the definition of "family" of individuals entitled to immunity to the definition promulgated by the Department of State in its regulations.

The PRESIDING OFFICER. The Senator from Rhode Island (Mr. PELL).

Mr. PELL. Mr. President, the principles of diplomatic immunity and the inviolability of the person of the diplomat are over 2,000 years old and have been part of international law and our law since the beginning of the Republic. The reason for diplomatic immunity is simple and basic: it is to assure that diplomatic representatives are able to carry out the official business of their governments without undue influence or interference from the host country. I emphasize that title V of S. 2757 in no way changes the fundamental rules concerning subjection of diplomatic and consular personnel to criminal jurisdiction or personal inviolability of diplomats. I am very glad indeed to support this measure of the Senator from North Carolina. I think it is a good measure.

Speaking as a former Foreign Service officer and one who was in charge of a post overseas in a Communist country, albeit a very small post, I can see no harm from reciprocity being invoked because of this measure. All that is required is that the sending country either submit its diplomat to local criminal processes or our country will expel him and her.

So, under that rubric, I do not see how there could be any harm to a U.S. diplomat because this country could always withdraw him.

Incidentally, while I have the floor I would like to thank the Senator from Hawaii and the Senator from Wisconsin for their kindness and courtesy in considering our amendments and again I apologize for the delay this afternoon.

Mr. HELMS. I thank the Senator.

The PRESIDING OFFICER. Is there further debate? If there be no further debate, the question is on agreeing to the amendment offered by the Senator from North Carolina (Mr. HELMS).

The amendment (No. 3343) was agreed to.

Mr. HELMS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. KASTEN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. INOUE. Mr. President, I move that the Senate concur in the House amendment to Senate amendment 182, as amended.

The PRESIDING OFFICER. The question is on agreeing to the motion.

The motion was agreed to.

Mr. INOUE. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. KASTEN. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. INOUE. Mr. President, that is it.

Mr. KASTEN. Mr. President, we are about to conclude the foreign operations conference report and this will be the final act of the Senator from Hawaii, who has acted so ably as the chairman of this committee.

He is moving on to the Defense Subcommittee, and I, for one, am going to miss him and I just want to thank him for the privilege and the opportunity of serving with him on this committee.

We have had a wonderful relationship. I think of him as a true friend.

We have also been able to establish a bipartisan approach to the important issues of foreign policy in the United States of America. So I commend and salute the Senator from Hawaii. I also thank our staffs, Richard Collins, Jim Bond, and the others. We have had a very strong and I think a positive working relationship. But it is due in most part to the leadership of the able Senator from the State of Hawaii and I thank him.

Mr. INOUE. Mr. President, I thank my dear friend for his kind words. I intend to be an active member of the Foreign Operations Subcommittee, although I will not have the privilege of serving as chairman. I wish him well. I wish Mr. Bond well. However, I am taking Mr. Collins with me to the Defense Subcommittee, but we will be seeing you. Have fun. Thank you very much.

PARENTAL AND TEMPORARY MEDICAL LEAVE

The Senate continued with the consideration of S. 2488.

Mr. BYRD. Mr. President, what is the pending matter now before the Senate?

The PRESIDING OFFICER. Action has just been concluded on the conference report. Technically speaking, the pending business is S. 2488, the parental leave bill.

Mr. BYRD. I discussed with the distinguished Republican leader the possible reduction of time on his motion and he indicated that he would be willing to reduce that time. It seems to me right at this point would be a good moment in which to have a vote; possibly 5 minutes to the Republican leader and 5 minutes to this side.

Mr. STENNIS. Mr. President, may I make a parliamentary inquiry?

Mr. BYRD. I yield for that purpose.

The PRESIDING OFFICER. The Senator from Mississippi (Mr. STENNIS).

Mr. STENNIS. Well, I thank the leader, Mr. President.